



U.S. Citizenship  
and Immigration  
Services

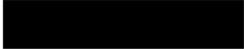
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FILE:



Office: Vermont Service Center

Date: NOV 02 2007

[EAC 07 002 74730]

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asks that CIS approve his application.

Reference is made to the fact that the applicant filed an application during the initial registration period. The applicant's prior TPS approval lapsed, and this application was filed subsequent to the initial registration period. Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Therefore, if an alien files an application subsequent to the initial registration period, they must establish eligibility under the criteria proscribed in 8 C.F.R. § 244.2(f)(2)(i)-(iv).

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

- (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
  - (iii) The applicant is a parolee or has a pending request for reparole; or
  - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on October 2, 2006. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The director noted that the applicant's prior application had been denied, and determined that the applicant had failed to establish he was eligible for late registration, denying the current application on April 5, 2007.

On appeal, the applicant asks that CIS approve his application. The applicant submits additional evidence on appeal.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 5, 2007.

On appeal, the applicant asks that CIS approve his application and submits the following documentation:

1. Tax documentation for the years 2001 – 2006.
2. A pay stub from National Service Company of Iowa.
3. Lease agreement starting in 2003.
4. Two handwritten receipts from 2003.
5. CIS Mailer dated September 21, 2001.
6. Letter dated April 7, 2007, from Javier Wenceslao Wetzell, asserting he has known the applicant since December of 2001.
7. Letter from [REDACTED] asserting the applicant worked for here in 2001 delivering newspapers.
8. Letter from Bishop Ronald Wilson asserting the applicant is a member of his congregation.

The employment affidavit from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the location of her business, nor is there any corroborating evidence in the record such as pay stubs, W-2 tax forms, or yearly income statements listing the business as an employer of the applicant. The item is rejected as authentic evidence. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The affidavit from Ronald Wilson has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. The Church is located in Georgia and the applicant is a resident of Maryland, this inconsistency is not explained by the applicant or the record. The AAO rejects this letter as authentic, credible evidence, and it will not be given any weight in these proceedings.

The AAO would note that the tax documentation submitted by the applicant does not appear to be authentic. As an example, the applicant has submitted a W-2 from 2001 and 2003 from the same company. The formats for each are different, however, and it is clear from typeface text on the 2001 W-2 that it was printed from a forms software program, and not by the employer. Further evidence of this includes the failure to put a control number on the 2001 W-2. An IRS Form 8829 for 2001 submitted by the applicant has a date-time stamp from the computer on which the form was prepared, and bears the same software application identification as the W-2 noted above. The date-time stamp indicates the form was prepared on April 8, 2007, (on or near the day the applicant's reference letters were prepared), and not in 2001 as the form suggests. None of the tax documentation submitted by the applicant have ever been submitted prior to the applicant's 2007 TPS application, and none of the documentation is certified. The AAO rejects these tax forms as authentic evidence and they will not be given any weight in these proceedings.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In this case the applicant has submitted a number of documents alleging that he was residing in Maryland in 2000, and yet the pay stub listed at No. 2 above bears an address in Minnesota. This evidence is also rejected as inconsistent and lacking credibility.

The remaining affidavits, handwritten receipts and CIS mailer are not sufficient to rehabilitate the credibility of the applicant's assertions.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001; or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.